

MINUTES OF OCTOBER 15, 2018

The regular meeting of the Sussex County Board of Adjustment was held on Monday, October 15, 2018, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman John Mills presiding. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Janelle Cornwell, Planning and Zoning Director, Mr. Jamie Whitehouse – Planning Manager, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Mills.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously to approve the revised agenda. Motion carried 5 – 0.

Motion by Mr. Callaway, seconded by Mr. Mears, and carried unanimously to approve the Minutes and Findings of Facts from the August 20, 2018, meeting. Motion carried 5 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the case.

OLD BUSINESS

Case No. 12211 – Kelly Hales seeks variances from the front yard setback and side yard setback requirements for existing structures (Sections 115-42, 115-182, & 115-185 of the Sussex County Zoning Code). The property is located on the west side of East Lagoon Rd., approximately 511 ft. north of Falling Point Rd. 911 Address: 30835 & 30843 East Lagoon Rd., Dagsboro. Zoning District: GR. Tax Parcels: 134-6.00-123.00 & 134-6.00-124.00.

Mr. Whitehouse presented the case which was tabled at the Board's meeting on October 1, 2018.

Ms. Magee and Mr. Mears stated that they believe the Applicant created the need for the variance.

Mr. Sharp reminded the Board that there are 4 variances being requested with this application.

Ms. Magee stated that she believes the house should have been placed in conformity with the Sussex County Zoning Code.

Ms. Magee moved **to deny the variance for the dwelling and to approve the variances for the shed, guesthouse, and the pumphouse** for Case Number 12211, seconded by Mr. Mears. Motion carried 3 – 2.

The vote by roll call; Mr. Workman – nay, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – nay.

PUBLIC HEARINGS

Case No. 12213 – Tony Petersen seeks a special use exception to operate a day care center (Sections 115-23 & 115-210 of the Sussex County Zoning Code). The property is located on the east side of Webb Farm Rd., approximately 0.44 mile south of Staytonville Rd. 911 Address: 11113 Webb Farm Rd. Greenwood. Zoning District: AR-1. Tax Parcel: 230-18.00-10.00.

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and three mail returns.

Michele Mosley was sworn in to give testimony. Ms. Mosley submitted a form signed by the property owner, Mr. Tony Petersen, stating that he has no objection to a daycare center.

Ms. Mosley testified that she seeks a special use exception to operate a daycare facility at her home for nine (9) children; that she has worked with children since 1999; that she is a substitute teacher and is involved in foster care; that she works with the State of Delaware and Children's and Families First for foster care; that the Property has a long driveway and parking area; that the Property has a playground; that the facility will be operating from 6:00 A.M. to 6:00 P.M. Monday through Friday; that she will care for children aged 6 weeks to 11 years old; that her nearest neighbor is over 200 feet away; that the chicken houses at the rear of the Property use a separate entrance; that there is ample parking; that the home is in an agricultural preservation area and she is unaware if the Department of Agriculture will allow a daycare facility to be operated on the Property; and it will not substantially affect adversely the use of the neighboring and adjacent properties.

Ms. Cornwell stated that the survey indicates that the Property is in agricultural preservation.

Mr. Sharp stated that agricultural preservation rules limit uses on lands within an agricultural preservation district but staff would need to research that to see if this facility is allowed under those regulations.

Ms. Mosley testified that her grandchildren live in the manufactured home on adjacent property.

Ms. Cornwell stated that two dwellings are allowed on the Property but one dwelling has been used for farm help.

Ms. Mosley testified that her future son-in-law works part-time on the farm; and that neighbors have not opposed the Application.

The Board found that no parties appeared in support of or in opposition to the Application.

Ms. Magee moved to leave the hearing for Case No. 12213 open for the limited purpose of allowing staff to research whether the agricultural preservation district regulations allow for this proposed use.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously to **allow the record to remain open for a limited purpose**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12214 – Cynthia J. Myers seeks a variance from the front yard setback for proposed structures (Sections 115-42 and 115-211 of the Sussex County Zoning Code). The property is located on the southside of South Dr. in the Tru Vale Acres development. 911 Address: 306 South Dr., Rehoboth Beach. Zoning District: GR. Tax Parcel: 334-13.00-39.00.

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received eleven letters in support and no letters in opposition to the Application and seven mail returns. The Applicant seeks a variance of 5.4 ft. from the 30 ft. front yard setback requirement for a covered front porch.

Cynthia J. Myers was sworn in to give testimony. Bill Schab, Esquire, was present on behalf of the Applicant, presented the Application, and submitted two additional letters of support for the Application.

Mr. Schab stated that the Property is located in Tru Vale Acres; that the Property is unique due to the small size of the original lot; that the Applicant has since bought additional lots to increase the size of her property; that the dwelling has been on the Property since the 1970s; that the deck and pool are located in the rear yard; that the original house had an encroachment and it was not created by the Applicant; that it is not possible to move the house back on the lot because of the placement of the deck and pool; that the Applicant has contracted to have a new home placed on the lot and learned of the encroachment of the original dwelling; that the Applicant seeks the minimum variance to afford relief and is replacing the current dwelling with a home that is almost the same size as the original; that the dwelling will fit on the lot but a variance is needed for the porch; that the exceptional practical difficulty was not created by the Applicant; that neighbors have received variances; and it will not alter the character of the neighborhood but rather enhance it with a new energy-efficient home.

Ms. Myers affirmed the statements made by Mr. Schab as true and correct. Ms. Myers testified that several neighbors have variances for the similar reasons; that the new house is smaller than the current house but will allow her to age in place; that the house will improve the neighborhood;

that it is a modular, energy-efficient home; that the variance is only for the front porch; that the dwelling will encroach less into the setback area than the prior dwelling; that she plans to use the existing deck; and that there is a gap between the edge of paving and the front property line.

The Board found that one (1) person appeared in support of and no one appeared in opposition to the Application.

Mr. Mears moved to approve Variance Application No. 12214 for the requested variance for the following reasons:

1. The uniqueness of the Property is that the Applicant purchased the Property not knowing she had a front property violation;
2. The Property cannot be otherwise developed without this variance due to the existing pool and deck;
3. The porch is a minimal sized porch;
4. This situation was not created by the Applicant as the issue was created back in the 1970s;
5. The variance will not affect the essential character of the neighborhood because a forty-year old house will be replaced with a modern, energy efficient house;
6. The requested variance is the minimum variance necessary to allow the Applicant to replace her house.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12215 – Walter N. Thomas, II seeks a variance from the side yard setback for a proposed structure (Sections 115-25, 115-185 and 185-211 of the Sussex County Zoning Code). The property is located on the northwest side of Griffith Lake Dr., approximately 0.26 miles northeast of Meadow Brook Ln. 911 Address: 16192 Bow Tie Dr., Milford. Zoning District: AR-1. Tax Parcel: 130-2.00-27.01.

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received one letter in support and no letters in opposition to the Application and zero mail returns. The Applicants seek a variance of 10 ft. from the 15 ft. side yard setback requirement on the northeast side for an accessory structure over 600 sq. ft.

Walter Thomas was sworn in to give testimony.

Mr. Thomas testified that he proposed to replace a garage with a larger one; that the existing garage was constructed built between the 1950s and 1976; that the Property is unique is as it is a

narrow lot sloped down to the lake and is limited by the placement of the septic line and the drain field; that the Property is wooded with large trees; that the rear yard slopes greatly so the garage cannot be placed there; that the current building is almost up to the property line and does have a variance; that the new building would have at least a 5 ft. setback; that he does not want to remove trees; that the shed in the front yard will be removed; that the existing garage measures 20 feet by 32 feet and the proposed garage will measure 28 feet by 40 feet; that he has received no complaints about the existing garage; and part of the Property is in the lake, therefore, it is not buildable.

The Board found that one person appeared in support of and no one appeared in opposition to the Application.

Mr. Mears moved to approve Variance Application No. 12215 for the requested variance for the following reasons:

1. The uniqueness of the property due to the placement of the septic line, drain field and trees;
2. It cannot be otherwise developed except by putting the garage in the same area;
3. This situation was not created by the Applicant, as it was existing before he was born;
4. It will not affect the essential character of the neighborhood;
5. The requested variance is the minimum variance to allow the building of a 28 ft. by 40 ft. garage.

Motion by Mr. Mears, seconded by Mr. Callaway, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12216 – Jackie D. Fitzgerald seeks a variance from the front yard setback for an existing and proposed structure (Sections 115-25, 115-185 and 115-211 of the Sussex County Zoning Code). The property is located on the southside of Staytonville Rd., approximately 0.42 mile west of Memory Rd. 911 Address: 12616 Staytonville Rd., Harrington. Zoning District: AR-1. Tax Parcel: 430-1.00-7.00.

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and one mail return. The Applicants seek a variance of 9.4 ft. from the 40 ft. front yard setback requirement for an addition to an existing garage.

Jackie D. Fitzgerald was sworn in to give testimony.

Mr. Fitzgerald testified that the Property is unique due to surrounding ditches; that the

Property cannot otherwise be developed because of the location of the septic tank and the well; that it was not created by the Applicant; that the garage was placed in its current location by his ex-wife; that the addition could not be placed on the south of the building as it would impede entrance to the home; that the variance will not alter the character of the neighborhood as it is an addition to an existing building; that he requests changing the request from and 9.4 ft variance to an 11.4 ft. variance as this would be the minimum to allow an addition measuring 12 feet by 26 feet as recommended by his contractor; and that the ditch easement restricts the side yard.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mears moved to approve Variance Application No. 12216 for the requested variance for the following reasons:

1. The uniqueness of the property due to the placement of the septic line and the placement of the existing garage;
2. The garage cannot be altered without this variance;
3. This situation was not created by the Applicant;
4. The variance will not affect the essential character of the neighborhood;
5. The requested variance is the minimum variance to allow an addition of 12 ft. by 26 ft. to the garage making it an 11.4 ft. variance.

Motion by Mr. Mears, seconded by Mr. Callaway, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12217 – Roman Morales & Rubicela Moran-Morales seek variances from the front yard setback for existing structures and from the minimum road frontage requirement for a proposed subdivision (Sections 115-25 and 115-211 of the Sussex County Zoning Code). The property is located on the north side of Nine Foot Rd., approximately 0.32 mile southwest of DuPont Blvd. (Rt. 113). 911 Address: 28007 Nine Foot Rd., Dagsboro. Zoning District: AR-1. Tax Parcel: 233-10.00-75.00.

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicants seek a variance of 25.1 ft. from the 40 ft. front yard setback requirement for an existing dwelling; a 40 ft. variance from the 40 ft. front yard setback requirement for an existing covered porch; and two 5.6 ft variances from the minimum road frontage requirements of 150 ft. to subdivide the existing parcel into two lots. The existing dwelling is non-conforming.

Roman Morales and Rubicela Moran-Morales were sworn in to give testimony. Shannon

Carmean Burton, Esquire presented the Application on behalf of the Applicants.

Mrs. Burton stated that exhibit booklets had been submitted to the Board; that the house is non-conforming; that the Property is zoned Agricultural-Residential; that the Property was developed in the 1970s with a dwelling and 3 accessory buildings; that the lot is unique because it is unusually shaped and oversized; that the Property consists of over 5 acres and could easily service 2 dwellings but the Property is too narrow to be subdivided without the variances; that the Property needs to be 300 feet wide to subdivide; that the exceptional practical difficulty was not created by the Applicants; that the Applicants purchased the Property in its current condition in October 2012; that the Property cannot otherwise be reasonably developed; that the variances are necessary to afford reasonable use of the Property; that the variances will not alter the character of the neighborhood as there are other homes in the area with less than 150 feet of road frontage; that the variances will not be detrimental to the public welfare; that the lots will be larger than required by the Code; that a nearby lot is less than 150 feet wide; that DelDOT has no opposition to the request; that the variances requested are the minimum variances necessary to afford relief; that the Applicants are transferring a lot to family; and that the access for both lots will be on Lot 1.

Ms. Moran-Morales affirmed the statements made by Mrs. Burton as true and correct. Ms. Moran-Morales testified that they are not allowed to build in the tax ditch; and that the carport was added to the building four years ago with a permit.

Mrs. Burton stated that there have been some renovations over the years.

Ms. Moran-Morales testified that the septic system is located in the front yard and the well is located in the rear yard; that the Applicants have cleaned out some of the structures on the Property; that there is approximately 10-15 feet from the front yard property line and the edge of paving of Nine Foot Road; and that the driveway encroachment will be removed.

Nancy Carter was sworn in to give testimony in opposition to the Application. Ms. Carter testified that all neighboring properties have 150 feet of road frontage – including her lot; that the Applicants' house has been remodeled; that any lots with less than 150 feet of road frontage would affect neighboring property values; that the Applicants should have gotten a survey prior to purchasing the Property; that her lot is 120 feet wide and was created in the 1950s; that there is another lot in the area which is 150 feet wide; and that she does not think the Property should be subdivided.

The Board found that no parties appeared in support of the Application and one (1) person appeared in opposition to the Application.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously **to table this case until the next meeting**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12219– J. Michael and Jill Yoder seek a special use exception for a garage/studio apartment and a variance from the maximum square footage for a garage/studio apartment (Sections 115-4, 115-23, 115-210 and 115-211 of the Sussex County Zoning Code). The property is located on the southeast side of Woodyard Rd., approximately 677 ft. northeast of Greenhurst Farm Rd. 911 Address: 10222 Woodyard Rd., Greenwood Zoning District: AR-1. Tax Parcel: 530-5.00-19.02.

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicants seek a variance of 630 sq. ft. from the 800 sq. ft. required for a garage/studio apartment and a special use exception for the garage/studio apartment.

J. Michael Yoder was sworn in to give testimony. David Hutt, Esquire, was present on behalf of the Applicant and presented the Application. Mr. Hutt submitted exhibit booklets to the Board.

Mr. Hutt stated that the special use exception application is for the garage/studio apartment to allow J. Michael Yoder's parents to live near the applicants; that Mr. Yoder is involved in construction; that Mr. Yoder's father is suffering from declining health and, as his health declines, he needs to live in a one level home; that his current home has steps and levels; that Mr. Yoder's father's physician submitted a note about the advisability of a single-level home; that Mr. Yoder's father no longer drives and the Applicants care for him; that Property is located approximately $\frac{3}{4}$ mile from Route 13; that there are single-family homes, farms, and poultry houses in the neighborhood; that adjacent lands are low lying wooded lands; that the Property originally consisted of 2 lots but has been combined into 1 lot; that the garage / studio apartment will measure 43 feet by 60 feet and exceeds the square footage requirement; that the Applicant reduced the size of the apartment and now only seeks a variance of 552 square feet; that the unit is designed to allow for wheelchair accessibility with wider doors – which adds to the square footage of the unit; that a handicap ramp will be installed as well; that there will be a second bedroom to provide space for a caretaker; that the unit is designed to look like the house; that Property is unique because it is oddly shaped and has a low-lying area which cannot hold a septic system; that the uniqueness of the Property creates a need for the variance; that the variance is necessary to enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicants; that the variance will not alter the essential character of the neighborhood; that the neighborhood is a rural area and the unit fits within the character of the neighborhood; that the unit is located a significant distance from the nearest neighboring home; that the variance requested is the minimum variance necessary to afford relief; that the use will not substantially adversely affect the uses of neighbor or adjacent properties; and that neighbors support the Application.

Mr. Yoder affirmed the statements made by Mr. Hutt as true and correct.

The Board found that nine (9) people appeared in support of and no one appeared in opposition to the Application.

Ms. Magee moved to approve Application No. 12219 for the requested special use exception and the variance as all the criteria has been met.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **variance and special use exception be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12220 – Brenda L. King seeks a variance from the front yard setback and height of fence for existing structures (Sections 115-42, 115-182, 115-185 and 115-211 of the Sussex County Zoning Code). The property is located on the southwest corner of Blackstone Dr. and Topher Dr., approximately 237 ft. east of Whites Neck Rd. 911 Address: 31566 Topher Dr., Ocean View. Zoning District: GR. Tax Parcel: 134-12.00-1973.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and two mail returns. The Applicants seek a variance of 9.6 ft. from the required 15 ft. front yard setback for a covered front porch and a variance of 0.58 ft. from the required 3.5 ft. requirement for fence height.

Brenda King and Dana Purkey were sworn in to give testimony. Mr. Purkey submitted a letter of approval from the Bowerset Homeowners Association.

Mr. Purkey testified that Ms. King had a stroke.

Ms. King testified that the porch was constructed with a permit by her son-in-law.

Mr. Purkey testified that the Property is unique because it is a corner lot; that a portion of the fence was removed but the fence is still too tall; that the fence was located on the Property when the Property was purchased two years ago; that there are other porches in the neighborhood; that the porch is large enough to have a small seating area; and that there are no visibility concerns from the fence.

Ms. King testified that there is approximately 25 feet from the edge of paving; that the porch cannot be placed in the rear yard due to the septic system; and that she has received only compliments.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mears moved to approve Variance Application No. 12220 for the requested variances for

the following reasons:

1. The Property is unique because it is a corner lot;
2. The Property could not be otherwise developed with a front entrance porch without the variance;
3. This situation was not created by the Applicant as the fence was already in place when the home was purchased;
4. The variances will not affect the essential character of the neighborhood but enhance it;
5. The requested variances are the minimum variances to allow a front entrance porch and the fence.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12221 – Southern Delaware Therapeutic and Recreational Horseback Riding, Inc. seeks a variance from the required setback for existing structures (Section 115-20 of the Sussex County Zoning Code). The property is located on the west side of Harbeson Rd., approximately 463 ft. south of Diamond Farm Rd. 911 Address: 17170 Harbeson Rd., Milton. Zoning District: AR-1. Tax Parcel: 235-26.00-17.14

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicants seek a variance of 148 ft. from the required 200 ft. for public stables to any lot line. Mr. Whitehouse noted that exhibit booklets had been submitted to the Board.

Mark Davidson and Tom Pete were sworn in to give testimony. Mr. Davidson presented the Application on behalf of the Applicant.

Mr. Davidson testified that the Applicant seeks to use the Property for public stables; that the stables will be used for more than 4 horses and will be located in 2 buildings; that a public stable is defined as any stable for the housing of horses or mules, operated for remuneration, hire, sale or stabling, or any stable, not related to the ordinary operation of a farm, with a capacity for more than four horses or mules, whether or not such stable is operated for remuneration, hire, sale or stabling; that the Applicant has owned the Property since 2016 and a conditional use was granted in 2017; that the Property was developed as it currently sits in 1989; that 1 stable holds 6 horses; that the main stable is attached to the farmhouse and has been on the Property since at least 1936; that the main stable holds 10 horses; that there are approximately 10 horses on the Property now; that the Property consists of 9.38 acre; that the caretaker house is located in the front; that there is an indoor arena, pastures, and outbuildings; that the uniqueness of the property is that it is only 378 feet wide;

that it could not be used for a public stable with the existing buildings without this variance; that there will be no further expansion; that the request is to use the existing stables; that, without this variance, the Applicant would be unable to use the conditional use previously approved by County Council; that the Property was purchase “as is”; that the Applicant uses the facility for equine assisted therapy; that the exceptional practical difficulty was not created by the Applicant as the stables were existing when the Applicant purchased the Property; that the variances will not alter the character of the neighborhood as it is agricultural farming and there is another equestrian center in the area; that is the minimum variance to afford relief and allow reasonable use of the buildings; that the variance is needed for final site plan approval; and that horses provide therapy.

Ms. Cornwell advised the Board that the variances required are as follows:

- 58.6 feet from the front yard setback requirement of 200 feet on the east side of the Property for a stable;
- 74.1 feet from the side setback requirement of 200 feet on the north side of the Property for a stable;
- 147.3 feet from the front setback requirement of 200 feet on the east side of the Property for a stable;
- 126.1 feet from the side setback requirement of 200 feet on the south side of the Property for a stable.

The Board found that ten people appeared in support of and no one appeared in opposition to the Application.

Paul Reiger and Alyssa Hudson were sworn in to give testimony.

Mr. Reiger testified that he thinks the arena should be included in the variance so there will not be any issues in the future; and that he supports the request for the variance.

Ms. Cornwell advised the Board that the arena does not need a variance and the variances are only needed for the stables.

Alyssa Hudson testified that she supports the Application; that the horseback program is important to people in Sussex County and makes them feel proud; and that the program is about honesty and doing the right thing.

Ms. Magee moved to approve Application No. 12221 for the requested variances as all the criteria has been met.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Meeting was adjourned at 9:15 p.m.